



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

SHALL CHURCH PROPERTY BE TAXED?

CARELESS writers constantly tell us that church and state in America are wholly parted, or, as the favorite phrase is, "absolutely divorced." Because they say this so often, careless people are surprised in proportion, when they find that in truth their operations are very closely intertwined, as from the nature of things they must be, in any country where there is religion and is also civil order.

What is true is that, with the distinctness which belongs to the American written constitutions, quite accurate statements have been made, in general, as to the functions which shall be performed by persons technically called officers of the church, and equally accurate statements as to the functions of the persons who administer what are called civil offices. It happens that a good many functions, such as those of public charity and of education, which, in Roman Catholic countries, are generally in the hands of ecclesiastics, have here been transferred, and belong to the civil service. So far it is true that functions which, in other countries, are discharged by men named by the church, are discharged here by men named by the state.

People are more confused than helped by the European analogies in the study of our politics. In this matter, it is generally true in Europe that the affairs of the church are ruled by one set of men, and the affairs of the state by another. So far as this is true, there is at bottom a severance between church and state. This severance may be concealed on the surface when ecclesiastics undertake civil duties, or when civilians meddle with church administration. All the same there exists the fundamental separation. But in America, outside the Roman Catholic church, which is but a foreign intruder, and seems to wish to remain so, the same universal suffrage controls the state and the church. The same man who votes in a town meeting or

at a county election Monday, votes on Tuesday in a parish meeting, if he so choose. In any village or in any county, the very same persons direct the affairs of the church who direct those of the state; the same people vote taxes for each, and the same people pay them. Alexander Everett called attention to this fundamental identity of the constituency of church and state, in his instructive book on America, sixty years ago. In that identity is the explanation of the ease with which a double system moves forward, of whose varied checks and balances it would be difficult to give account were there not, at bottom, this substantial identity of the persons carrying on both parts of the system.

From this double system, carried forward now in a church meeting, now in a town meeting; now by ecclesiastics, now by civilians, it sometimes happens that one branch tries an experiment, which, when successful, is taken in hand by the other—all parties assenting. Thus the establishment of evening schools in the city of Boston is due historically wholly to church agency. The first was established by the Warren-street Chapel; the system was taken up by the associated churches styled in that city the "Benevolent Fraternity." The persons who carried on the school afterward asked and obtained help from the city treasury, and eventually the school committee of the city took the whole oversight and expense. That is, a movement begun by officers of the church, so called, was adopted and carried on by officers of the state, so called. In fact, of course, the distribution of the expense is somewhat different when, as in the one case, it falls on the public spirit of the citizens, and when, as in the other case, it is paid by the city tax-payers. But, where the benefit is generally acknowledged, this change is generally assented to. The history of the primary instruction in Boston is a larger and earlier illustration of a similar transfer.

From the same identity of the constituency in both church and state, there frequently springs up in the oversight of public charities a dual supervision, which would be otherwise inconvenient or impossible, but which, with us, is more and more considered to approach the ideal system. The arrangement in New York, by which prisons and hospitals are subject to regular visitation by the committees of what is called a private charitable association, is such an arrangement of double oversight. The truth is, that the Public Charities' Society is just as much a public institution as the State Senate is. But because

it is chosen by different agencies, the public has the security of a double oversight, and gains stereoscopic distinctness in its examination of the institutions of correction and of relief. General Grant wisely attempted something of the same kind, when he gave to the great missionary associations the appointment of the Indian agents. The agents were to work, all the same, under the direction of a civil bureau. He thus secured the double oversight of an ecclesiastical and a civil body. And he obtained what the Japanese attempted and did not obtain when they sent two officers for the discharge of one duty.

Among these double arrangements by which the people, the sovereign of this country, has assigned to the officers of both church and state the arrangement of one affair, comes in the exemption of church property, when used for purposes of worship, from secular taxation. Palpable inconveniences in administration have challenged attention to this particular double arrangement, and it is often carelessly said that it is without any analogy in our system. That is not true. Our system is, in all regards, a practical system, in which the sovereign advances his purposes in the shortest way, quite indifferent to its theory. It is true that since the publication, by Mr. Josiah P. Quincy, of some simple and vigorous papers on the subject, beginning now nearly ten years ago, the inconveniences of our double system have attracted very general observation. In some states the taxation of church property has been established. In all it has been suggested. It is probable that a practical solution may be found, which will exempt those churches which perform a definite public duty, while those churches are taxed which prefer to act as private corporations. It is the object of this article to show the basis on which such a solution will rest.

It is undoubtedly the policy of a republic to encourage men to surrender their private property to the general or public service. This has been from the beginning a principle with us, which has expressed itself in statutes. And the state must not look a gift-horse in the mouth. If a man give a statue to the public, the public must not say it would rather have a registered bond for the amount which the statue would cost. It takes the statue. It ought not even to complain of his choice of an artist. It accepts the statue. People who do not like it need not look on it. When accepted, of course the public does not tax it. This analogy holds through the whole system of the diversion of prop-

erty from being private property to use for, or by, the public. The state, because it represents the public, encourages, and ought to encourage, such diversion. It does not ask whether the diversion is such as its best wisdom would have suggested. It asks simply whether the property have ceased to be private property, and whether, in good faith, it is administered for the public. It may be that the public does not receive the advantages with absolute freedom. Thus a man may endow a college, for the public good, and any student in that college may have to pay for a part of his education. Still if, in good faith, there have been a surrender of private property for the benefit of all, the state would and should recognize this as a public use. Such is the general policy, and, as we believe, it is the sound policy of all our administrations.

But, of course, a question will constantly arise,—whether it be for the public good that private property has been surrendered. When a thousand gentlemen associate and build a club-house,—that they may have a common library and reading-room,—no one thinks that is a public purpose. When a rich land-owner connects himself, in a private corporation, with a poor school-master, builds a cheap school-house on a forty-acre lot of land, and opens a school upon it for pupils who pay all the charges of instruction,—when he comes to the tax-assessors and says all this is a public institution of education, these assessors are very apt to grumble. They suspect that after twenty years—after that piece of land has become much more valuable—the school will fail, and the land be cut up for house-lots. And, in general, with regard to institutions of benevolence, the question always comes up—and should come up—whether the benevolence intended be that general benevolence which takes in all mankind, or whether it be a mere private benevolence, which cares only for the persons who themselves unite. Thus, the general benevolence of the Christian Church is one thing; the benevolence of a mutual insurance company, or of a lodge of Free Masons or of Odd Fellows is quite another thing, however admirable in its way. There arose, therefore, centuries ago, in the very birth of the Roman law, the distinction, ever since observed, between public charities and private charities. Public charities are open to all mankind who may be in need of their relief. Private charities are open only to certain subdivisions of mankind, indicated by their statutes or system. Of course it will not be easy, in every case, to

say whether a given enterprise of benevolence is a public charity or a private charity ; but, easy or not, the decision has to be made. And the whole question before our legislatures to-day, regarding the taxation of churches in America, is an effort to decide whether they be public or private charities.

Up to a recent time, as we have said, they were universally regarded as public charities. On the ground that they are public charities, they have been generally exempted from taxation. They and their ministers have been favored with other privileges, great and small, because of the recognized public service which they rendered. So long as the public felt that, at every point, the church and its officers were engaged in distinctly public service, the public recognized that service, and tried to facilitate it. It is not what many people call a superstitious reverence for the clergy which makes a "pike-keeper" at the West pass a clergyman free, if he ask for the privilege of a free passage. It springs from the sense of that community that, on the whole, the clergyman is engaged in public service. For if he do not preach in one place he preaches in another. Wherever people will come together to learn, he is willing to teach. It is not that the turn-pike company establishes a debtor and creditor account with the church and the clergy, and calculates that the corporation has gained so much by church-bred honesty that it can and ought to remit so much in compensation. It is that, in that community, there is a general impression that church and clergy are in the public service, and that the public service must be helped forward by a corporation which exists only by the public permission.

There are many parts of the country where this position of the church and the clergy has never been abandoned. The minister of the old "First Congregational Church" of a country town in Massachusetts or Connecticut is still accounted, by old-fashioned people, as the minister or servant of the whole town, not simply of one congregation. If he is wise, he accounts himself so. The younger Leonard Bacon has published more than one spirited sermon, or other article, to show his brother ministers in his own communion that they must not abate one jot of this privilege of a New England minister. In almost any such town, the minister of this church would be asked to serve on the school committee, and he ought to have good reason to show if he decline. Till very recent times this "First Church" would feel bound to provide sufficient and comfortable seats for all in the town who

wished to meet in the "meeting-house" for the Sunday services, without asking the ungracious question how far they contributed to the joint expenses, or, as the quaint Yankeeism puts it, "whether they steal their preaching." It goes as a matter of course in such a town—it goes "without saying"—that the minister of the First Church attends every funeral, of every stranger, or other persons without family, or of any person who dies "whose family are not connected with any religious organization," as the church records say. The church accounted itself, till within the memory of the present generation, not simply responsible for the morals or religion of certain persons who met to worship within its walls, but responsible for the highest well-being of the whole community—its education, its manners, its morals, and its religion;—we have a right to say, for its health, moral and physical.

But, all the same, it is certain that this condition of things will seem to some readers prehistoric. We could wish that it did not seem primitive and impossible to some ministers. In fact, however, we believe that faithful ministers cling to this position, and like to account themselves "servants unto all." Still, the public begins to doubt if they are. Still more, it doubts whether the organizations called churches are. The disposition to refuse exemption from tax to churches springs from this doubt.

We believe that the churches are themselves responsible for the growing change in the matter. When they begin to regard themselves as private charities, the public will regard them so before the generation has passed by.

And any change which the last generation has seen in the simple readiness with which, by one concession or another, the public acknowledged this service, has come from the gradual failure of churches to render general or public service. When it happens that a clergyman, asked to bury a poor actor, answers that it is none of his business, because the man does not belong to his parish; when he says he believes there is a "little church around the corner" where they do such things, but that, really, he cannot, nor his church,—that remark of his indicates a new period, when churches are beginning to consider themselves private charities, and not public charities.

Oddly enough, and this is an important instance, the great Roman Catholic Church, in entire falsity to the idea of catholicity, has, in this country, dropped wholly into this narrow habit, which considers churches as clubs, instituted for the benefit of their

members. Thousands of Protestant clergymen have spent and been spent in the physical relief of poor persons belonging to the Roman communion. But who can name ten instances in America, where the Roman Catholic priest, in any neighborhood, has lifted a finger for a Protestant beggar? This church worships in a foreign language, maintains a foreign clergy, and—by an almost affected isolation—stands apart from the school system, the lyceum system, the public hospitals, and all general charities of America. They must be Roman Catholic institutions, or this church will have none of them.

Again: there has grown up a habit, in our large towns, of building up what in England would be distinctly called “private chapels,” where an attached, well-educated, and well-to-do parish engages the ministry of a brilliant, learned, and pious minister to serve it. This habit runs in just this same direction. Men do not say it in words,—nay, they do not think it systematically,—but in practice the thing amounts to this—that that chapel is their private religious club-house, and the minister is the consecrated steward of the club. True, he wishes to do work outside of it. He is always trying to make the mass of men understand that it is Christ’s church, and free as air to all comers. But it is not free as the air to all comers. It is built at the cost of certain persons, who own it. They have a right to enter it, above the right of those whom they invite to enter it. It is their property. I may ask all the world to enter my house. I may be as cordial as daylight to every one who comes. Still, every one who comes knows it is my house, and respects my property in it. Just that is the relationship of the outside congregation, however loyally or cordially invited, to the persons who have built a chapel, or church, or meeting-house, and at whose charge religious service is maintained in it.

What happens at such a church every Sunday? A body of accustomed worshipers, taught by experience to attend promptly, do attend promptly, and take the seats to which they have attained a right. Perhaps they literally own these pews, nor is there anything wrong in their owning them. A floating congregation of other persons, attracted by the earnestness of the preacher or the dignity of the ritual, attend as visitors. They are visitors. They call themselves visitors, and they are so called by their hosts. The most spirited efforts are made, very probably, to accommodate them with seats, and the service begins.

But all the world sees and knows that this is not the same thing which all the world saw and knew fifty years ago. When the town built the meeting-house from its own treasury, and provided that the house should be large enough for every man and woman in the town who chose to come, the condition was wholly different from what it is in such a private chapel as we have described. The public notes the difference; and, in a form which challenges general attention, the public is reminded that such churches are no longer "public charities," but that they have become "private charities." It must be remembered that these churches, precisely because they are large, successful, and because the utterance from their pulpit goes far and wide, arrest much more of the public attention, and stimulate discussion on this subject we have in hand much more, than do the more primitive established congregations, which have survived from older generations, and, so far as they can, are pursuing the older way.

But a hundred readers, even before they have come thus far, interrupt us by exclaiming that all such illustrations are exceptional, or do not describe the whole. In the churches they know best, the charity committees are on the alert to spy out all suffering. The minister devotes only too much time to those who are lost; he is even too confident that the sheep who are folded do not need him. He does not put a fair amount of work on his Sunday duty, they say; he is spending and spent on the schools, or on the drainage, or on the public library of the village. He gives himself up, and the officers of the church give themselves up, to the public duties to which Jesus Christ commissioned them. He came to save men from their sins, and that is what these churches are eager to do. He came to seek and save that which is lost, and that is what these ministers are working for. Such a protest, admirably well put, gives the force to Dr. Pitzer's careful article, which appeared in this REVIEW a year ago.

We are eager to admit all the fair force of such protests, and so, as we believe, is the public. But we call attention to the subject again,—as, doubtless, we may have to do often,—to suggest that such protests must not be left to rhetoric, to pulpit appeal, or to merely literary expression. Let us have them in statistics; and the public—which, as we have said, is at bottom the constituency of the church—will accept them as readily as any synod of ecclesiastics.

What the public will not accept, and ought not to accept, is the condoning for the selfishness of some churches by the plea of generosity of others.

We believe that there is no practical difficulty in arranging the details of a system by which those churches which really do public duty, and are, therefore, public institutions, should be respected as such; by which, also, those which are virtually private clubs, and indifferent to the public as such, should be regarded as private, and taxed accordingly.

We do not think this distinction is sufficiently made in such statutes as that of New Hampshire. That State discriminates between rich churches and poor. It taxes church property where it exceeds ten thousand dollars, and exempts it where it is below that sum. There is no principle for the distinction. And, in the long run, such distinctions do not satisfy.

In a more equitable distinction, we should tax all churches in form, and should exempt in practice those which proved their right to exemption. Let the test of this right be in the expenses of the charities of a church, outside the families of the organized corporation. What the social science people call "outdoor relief" is precisely the side of charity which most disturbs the public functionaries of the state. It is precisely the side of charitable work on which churches, from their very nature and traditions, can and ought to engage. Let every organized congregation, then, show to the assessing officers every year a precise account of the money it has spent in public charities—as in its poor relief, in its hospitals, or similar public cares. No account can be more easy to prepare and audit. Let every church be credited for this payment, and exempted, in proportion, from the tax on its property. And let its exemption go no farther.

The analogies for such exemption, in our common-sense legislation, are frequent. Thus, in many of the States, a man who maintains a water-trough where travelers may refresh their horses, is exempted from tax, in a sum determined on. Subdivided and simplified as is our admirable system of local taxation, the details of such a plan would be managed without any appreciable difficulty.

The merit of the plan is its justice, which is so clear that every one ought to be satisfied with it. The rich churches, which have built large and costly edifices for their comfort, ought to pay largely in these outdoor charities. In the compar-

ative leisure of their congregations they have a force, far more than sufficient, for organizing these charities so that they shall do more good than harm. They will carry to the work of relief the tenderness and intelligence combined, without which there is no relief. "You do a man no good," as Dr. Ellis wisely says, "till you begin to make him better." This is just what churches are for. It is just what they claim even divine power to do. And they will have no right to complain, but rather to rejoice, when any dispositions of the public law of the country compel them, as organizations, to attempt such duties, if they have been tempted to leave such duties to the unorganized tenderness of their separate members.

But if any church prefer to "enter into its rest," and so declines organized and systematic effort for the improvement of its neighborhood, let it pay its tax to the community. This is the alternative. Ten years of discussion of this subject in almost every forum in America have failed to show any strong reason why such a tax should not be levied upon all private corporations—even though they be "private charities." If a church cannot prove itself a "public charity," it must be taxed, as a private library would be taxed, even though it were held by several persons in partnership—as a private school is taxed, even though there be several teachers who unite in it. The church must be judged by its fruits, as the Master said and directed. Among those fruits which the commonwealth has a right to exact and to sit in judgment on, the most important is the higher life of the community in which it lives. Let us see what those theories of God and man are worth, which it teaches; when they are squarely and distinctly applied, in its own practice, to reclaiming drunkards, to reforming criminals, to preventing pauperism, and, in general, to lifting up what has fallen down.

We have no fear as to the unfavorable result of such gentle compulsion by the state, either on church architecture or the cause of missions; that it may reduce the dignity of ritual or in any way hamper the freedom of our congregations, or that noble growth and strength which is the result of freedom. These things are always added, as they have always been added, to those who are willing first to bring in the rule of God and what has still no better name than His Righteousness.

EDWARD E. HALE.